IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

WEDNESDAY, THE 20TH DECEMBER 2006 / 29TH AGRAHAYANA 1928

WP(C).No. 25808 of 2006(V)

PETITIONERS:

---

1. SULEKHA BEEVI, W/O.KHAHAR MEERA RAWTHER,
   PERMANENTALY RESIDING AT MADHURAVEETIL,
   PUTHUPPARAMBIL, PUZHAVATH MURI, CHENGANACHERRY
   VILLAGE AND TALUK, KOTAYAM DISTRICT.

2. KHADHAR MEERA RAWTHER,
   PERMANENTALY RESIDING AT MADHURAVEETIL,
   PUTHUPPARAMBIL, PUZHAVATH MURI, CHENGANACHERRY
   VILLAGE AND TALUK, KOTAYAM DISTRICT.

BY ADV. SRI.P.KURUVILLA JACOB

RESPONDENTS:

---

1. THE DISTRICT COLLECTOR, KOTTAYAM.

2. THE TAHSILDAR, CHANGANACCHERRY.

3. THE TALUK SURVEYOR, CHENGANACHERRY.

4. THE VILLAGE OFFICER, CHANGANACHERRY.

5. THE CHANGANACHERY MUNCIPALITY
   REP. BY ITS SECRETARY, MUNCIPAL OFFICE,
   CHANGANACHERRY.

BY ADV. SRI.SIBY MATHEW
SRI.A.A.MOHAMMED NAZIR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD 15/12/2006, ALONG WITH WPC NO. 28788 OF 2006 THE COURT ON 20/12/2006, DELIVERED THE FOLLOWING:

PETITIONERS' EXHIBITS:

EXT.P1 TRUE COPY OF NOTICE DT. 11-9-2006.

EXT.P2 LETTER DT. 23-9-2006.

EXT.P3 LETTER DT. 25-9-2006.

EXT.P4 PHOTOGRAPHS OF PRESENT CONDITION OF ENTRANCE PORTION.

EXT.P5 COMPLAINT DT. 27-9-2006.

[TRUE COPY]

P.S TO JUDGE.

S. Siri Jagan, J.

=-=-=-=-=-=-=-=-=-=-=-=-=-=-=-=-=-=-=

W.P (C). Nos. 25808 & 28788 of 2006

=-=-=-=-=-=-=-=-=-=-=-=-=-=-=-=-=-=-=

Dated this, the 20th December, 2006.

J U D G M E N T

Petitioners in W.P(C) No. 25808/2006 approached this Court seeking the following reliefs:

> "i) To issue a writ of mandamus or any other appropriate writ, order of direction to first respondent directing him to dispose of Ext. P5 petition in accordance with law and within a specified period of time, that may be fixed by this Hon'ble Court;
>
> ii) to declare that the illegal acts took place in the residential property of petitioners in the presence of 3rd respondent with the support of 5th respondent as revealed from Ext. P4 series are highly illegal, arbitrary, unjust and without the authority of law."

2. I am inclined to dismiss this writ petition with exemplary costs since I am of the opinion that the petitioners did not approach this Court with clean hands and tried to mislead this Court by not stating the entire facts of the case and without impleading the necessary parties. The facts relating to the case are as follows.

3. In the writ petition, the 1st petitioner stated that she is the owner of 19 cents of land comprised in re-survey no. 7 in Block 173 of Changanacherry village as per sale deed no. 535/71 of Changanacherry Sub Registrar's Office. 2nd petitioner is the husband of the 1st petitioner. One Muhammed Kani @ Mammu, an adjacent property owner of the petitioners, filed a complaint before the authorities under the Kerala Land Conservancy Act (for short 'the Act') complaining that on the northern boundary of the petitioners' property, he has encroached into Government land and constructed a compound wall enclosing a public road. The authorities under the Act took up the matter as L.C. No. 1/1993, against which the petitioners filed O.S.No. 119/1993 before the Munsiff's Court, Changannacherry. Against another neighbour, namely, one Abdul

Azeez also, proceedings were initiated under the Act, which was taken up as L.C. No. 2/1993. The petitioners, together with the said Abdul Azeez, filed O.S.No. 127/94 before the Munsiff's Court, Changanacherry and obtained interim relief. Finally, both the suits O.S.Nos. 119/93 and 127/94, were dismissed by judgment dated 30-1-1999. Appeals preferred against those original suits, namely, A.S.Nos. 37 & 38 of 1999 before the District Court, Kottayam were also dismissed by a common judgment dated 31-3-2006. The petitioners submitted that they had filed second appeal against the same. When the 3rd respondent issued Ext. P1 notice dated 11-9-2006, informing the 1st petitioner that boundaries of her residential property would be re-fixed on 225-9-2006 and she should be present at the site, although, by Ext. P2 letter dated 23-9-2006, the petitioners informed the 3rd respondent that second appeal has been filed before this Court, the officers of the 3rd respondent with help of the field staff of the 5th respondent-Municipality, demolished a portion of the petitioners' compound wall. In the circumstances, the 1st the petitioner filed Ext. P5 petition dated 27-9-2006 before the District Collector to set aside the proceedings for re-fixation of the boundary of the petitioners' property. Thereafter, on 29-9-2006, the petitioners have approached this Court seeking the above said reliefs.

4. On 29-9-2006, when the matter was moved as 'today moving', while admitting the same, I directed that status quo shall be maintained. Thereafter, on 25-10-2006, the petitioners again sought permission of this Court to re-construct the demolished portion of the compound wall of the petitioners' residential property and to fix the entrance gate in the compound wall at its original position and to

direct the 5th respondent to reimburse the expenses for the above said construction works. I had, by order dated 25-10-2006, permitted the petitioners to re-construct the compound wall at its original position at their own risk and cost subject to the condition that if, ultimately, the writ petition is dismissed, they would be liable to demolish the same at their own costs. Thereafter, the petitioner in W.P(C) No. 28788/2006 filed that writ petition producing a copy of my order seeking a direction to respondents 1 to 6 to take all measures under law, to restore the road and poramboke land, which is subject matter of W.P(C) No. 25808/2006. In the same, the petitioners produced the lower court judgments in O.S.Nos. 119/1993 and 127/1994. When that matter came up for admission before me on 2-11-2006, I directed that the same be posted along with W.P(C) No. 25808/2006. On 6-11-2006, the two writ petitions came up together. It was then that I noticed that the petitioners in W.P(C) No. 25808/2006 have cleverly hoodwinked this Court by not stating that in the said original suits, there was a specific finding by the lower court that the land in question was a poramboke land. The petitioners although mentioned the fact that those original suits were dismissed, they had cleverly not said the fact that there was a specific finding in the suit that the land in question was poramboke land and that it was pursuant to the same that the land conservancy proceedings were proceeded with and the 3rd respondent in W.P(C) No. 25808/2006 initiated proceedings for re-fixation of the boundary of the petitioners' property in that writ petition. According to me, in order to prevent this Court from knowing these details, the petitioners deliberately did not implead the legal heirs of deceased 3rd defendant in O.S.No.37/1999, who are

the petitioners in W.P(C) No. 28788/2006. The real facts came to light only from W.P(C) No. 28788/2006. In the above circumstances, I dictated judgment in W.P(C) No. 25808/2006 on 6-11-2006 dismissing the writ petition with costs of Rs. 15,000/-, directing that it would be open to the respondents to take appropriate proceedings on the basis of the interim order dated 25-10-2006. I also observed that the petitioners would be liable to demolish the re-constructed portion and the respondents would be free to demolish the same at the cost of the petitioners if the petitioners do not demolish the same. At that time, the petitioners in W.P(C) No.25808/2006 sought time to file a counter affidavit in W.P(C) No. 28788/2006. In the above circumstances, I thought it fit to postpone signing of the judgment in W.P(C) No. 25808/2006 and posted the same for "to be spoken to" on 8-11-2006. The same was adjourned to 22-11-2006 and was being adjourned from time to time at the instance of counsel for the petitioners. Ultimately, the petitioners in that writ petition submitted that on 1-12-2006, another learned Judge of this Court had passed an interim order in I.A.No. 2631/2006 in R.S.A.No. 1097/2006. From the pleadings in W.P(C) No. 28788/2006, I came to understand that the said R.S.A was in fact filed on 26-9-2006 and it is after filing that R.S.A that this writ petition was moved. Although the petitioners had stated that a second appeal was filed against the judgments dismissing their Appeal Suits, they did not either state the date of filing of the R.S.A or the number of the same in the writ petition which was filed on 29-9-2006, i.e three days later. In fact, it was after filing that R.S.A that Ext. P5 has been filed before the District Collector, on 27-9-2006.

5. From the same, it is evident that after filing R.S.A on 26-9-2006, without moving for interim orders in that R.S.A, the petitioners have filed W.P(C) No.25808/2006 for the above said reliefs. I am of opinion that this is an abuse of the process of Court. When there was a specific finding in the lower court judgment that the land in question was a poramboke land and when the 3rd respondent initiated proceedings in accordance with the findings in the said judgment without moving that R.S.A, the petitioners have filed another petition before the District Collector and filed this writ petition seeking a direction to the District Collector to dispose of Ext. P5 which the District Collector could not have, since the matter was covered by judgments of the lower court. The petitioners have also deliberately did not implead the petitioners in W.P(C) No. 28788/2006 in W.P(C) No. 25808/2006, although they were necessary parties to the writ petition in view of the fact that it was in a judgment in a civil suit in which they were also parties that the finding that the land in question was a poramboke pathway was entered. For all these reasons, I am of opinion that the petitioners did not disclose the entire facts in the writ petition and obtained orders from this Court on false pretensions. Therefore, I am of opinion that the status quo ante as obtaining prior to my order dated 25-10-2006 has to be restored in this case.

6. I also notice that in R.S.A.No. 1097/2006, the petitioners have obtained an order dated 1-12-2006 to the following effect:

> "There will be an interim order that no pathway will be cut open by respondents for a period of one week."

Thereafter, the said order was extended by one month on 7-12-2006. In view of the above, I further direct that although status quo ante should be restored, respondents shall not cut open a pathway as

directed in I.A.No. 2631/2006 in R.S.A. No. 1097/2006. With the above directions, the writ petition is dismissed. I also direct the petitioners to pay costs of Rs. 10,000/- to the respondents in W.P(C) No. 25808/2006. The judgment dictated on 6-11-2006 is recalled.

In W.P(C) No. 28788/2006, after arguing for some time, when it was pointed out that the petitioners' remedy lies in getting the interim order in R.S.A.No.1097/2006 vacated, learned counsel for the petitioners seeks permission to withdraw the same. Accordingly, the said writ petition is dismissed as withdrawn.

Sd/- S. Siri Jagan, Judge.

Tds/